

DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IDA SMITH,)
)
 Plaintiff,)
)
 v.)
)
 ALL PERSONS CLAIMING A PRESENT OR)
 FUTURE INTEREST IN ESTATE 13,)
 FRIIS, LINDA V. SMITH-FRANCIS,)
 WILLIAM E. SMITH, ELOISE V. SMITH-)
 HENDRICKS, BAB FRIIS NO. 1, PAUL)
 HOFFMAN, JANE HOFFMAN-WALKER,)
 ELEANOR ADAMS HOFFMAN, MAXWELL)
 ADAMS HOFFMAN, GLORIA FRANCOIS)
 MCGOWAN, DAVID A. BORNN AS TRUSTEE)
 TO THE GAF TRUST ESTATE 14 JOHN'S)
 FOLLY EXCLUDING ALL HEIRS AT LAW,) Civil No. 2011-41
 ESTATE 15 CONCORDIA A, CORAL BAY)
 QUARTER, ST JOHN UNITED STATES)
 VIRGIN ISLANDS, NATIONAL PARK)
 SERVICE, LAND RESOURCES DIVISION,)
 DEPARTMENT OF INTERIOR, THE UNITED)
 STATES OF AMERICA, STANLEY)
 SELENGUT, WILLIAM B. POPPELTON,)
 LORRAINE A. POPPELTON, KEVIN M.)
 WALSH, MARIA K. STURATIS, SCOTT E.)
 WILMOSKI, CHARLES M. PERDUE,)
 MONICA PERDUE, JOZSEF NEMETH,)
 NANCY NEMETH, FRED S. PATTERSON,)
 MARGARET D. PATTERSON, JOHN R.)
 PERGOLIZZI, TREASURE VIEW LLC,)
 GEORGE PILLORGE, DEBORAH PILLORGE,)
 SCOTT L. HARTSHORN, CLAUDETTE C.)
 HARTSHORN, HEINZ G. FISHER, LINDA)
 G. BURDET TRUSTEES OF THE HEINZ G.)
 FISHER TRUST, DONALD DURANTE,)
 SAFIA B. DURANTE, CRAIG E.)
 MITCHELL, ALAN MARTIN KAUFMAN,)
 RACHELLE KAUFMAN, JEFFREY J.)
 MCCRAVE, ANN McCRAVE, DOROTHY K.)
 JANOSKO, WILLIAM R. KINCER, SUSAN)
 B. KINCER, SUSAN GREER)
 LITTLEFIELD, WAYNE CHESTERFIELD,)
 MONIQUE FRANCOIS, PEDRITO)

Smith v. All Persons Claiming a Present or Future Interest, et al.

Civil No. 2011-41

Order

Page 2

FRANCOIS, SALT POND VISTA LLC,)
V.I. JOSEPH PALMINTERI, CARRIE)
GLENN, MARC KAVE, EMILY J.)
BRATTON, RICK HATHAWAY, RENE A.)
SERVANT aka RENE H. SERVANT, MARIE)
THERESE L. SERVANT, LORI JANE)
SNACK, BRIAN K. WALDEN,)
MINISTER ISHMAEL R. MUHAMMED,)
MICHAEL CARPER, REUBEN WHEATLEY,)
et al.,)
Defendants.)

)

APPEARANCES:

Ida Smith

New York, NY

Pro se plaintiff,

Ronald W. Sharpe, USA

Jason Cohen, AUSA

St. Thomas, VI

For the United States National Park Service,

Maria Tankenson Hodge, Esq.

Hodge & Francois

St. Thomas, U.S.V.I.

*For Paul Hoffman; Jane Hoffman Walker; and David A. Bornn,
Trustee of the GAF Trust,*

Rafael F. Muilenburg, Esq.

Morrisette & Muilenburg

St. John, U.S.V.I.

*For William E. Smith; Eloise V. Smith; Deborah Pillorge;
Claudette C. Hartshorn; Scott L. Hartshorn; Linda V. Smith-
Francis; and George Pillorge,*

Gloria McGowan

Pro se,

Wayne Chesterfield

Pro se,

Smith v. All Persons Claiming a Present or Future Interest, et al.

Civil No. 2011-41

Order

Page 3

Monique Francois

Pro se,

Pedrito Francois

Pro se,

Joseph Palminteri

Pro se,

W. Mark Hillsman, Esq.

Law Offices of Norman P. Jones, P.C.

St. Thomas, U.S.V.I.

For Carrie Glenn; Lori Jane Snack; William B. Poppelton; Lorraine A. Poppelton; Maria K. Sturaitis; Charles M. Purdue; Monica Purdue; Salt Pond Vista, LLC; Heinz G. Fisher; Linda G. Burdet, Trustee of the Heinz G. Fisher; Safia B. Durante; Donald Durante,

Marc Kave

Pro se,

Emily J. Bratton

Pro se,

Rick Hathaway

Pro se,

Rene A. Servant

Pro se,

Marie Therese Servant

Pro se,

Brian K. Walden

Pro se,

John H. Benham, III, Esq.

Watts, Benham & Sprehn, P.C.

St. Thomas, U.S.V.I.

For Stanley Selengut,

Mark D. Hodge, Esq.

Hodge & Francois

St. Thomas, U.S.V.I.

For Kevin M. Walsh and Treasure View LLC,

Smith v. All Persons Claiming a Present or Future Interest, et al.

Civil No. 2011-41

Order

Page 4

Scott E. Wilmoski

Pro se,

Jozef Nemeth

Pro se,

Nancy Nemeth

Pro se defendant.

Fred S. Patterson

Pro se,

Margaret D. Patterson

Pro se defendant.

John R. Perqulizzi

Pro se,

Terryhill Enterprises, II

Pro se,

Missouri LLC

Pro se,

Craig E. Mitchell

Pro se,

Michael E. Fitzsimmons, Esq.

Stryker, Duensing, Casner & Dollison

St. Thomas, U.S.V.I.

For Alan Martin Kaufman,

Ann McCrave

Pro se,

Jeffrey J. McCrave

Pro se,

William R. Kincer

Pro se,

Susan B. Kincer

Pro se,

Smith v. All Persons Claiming a Present or Future Interest, et al.

Civil No. 2011-41

Order

Page 5

Susan Greer Littlefield

Pro se,

Kurt Shore

Pro se,

Suzanne L. Shore

Pro se,

Dorothy Janosko (also known as "Dorothy K. Janoko")

Pro se.

ORDER

GÓMEZ, J.

In an August 1, 2016, order, the Court dismissed Ida Smith's ("Smith") claims against the United States for lack of subject matter jurisdiction because (1) she failed to comply with the pleading requirements of the Quiet Title Act; and (2) she failed to adequately allege she had standing to bring those claims. *See* ECF No. 505.

In its August 1, 2016, order, the Court observed that "Smith's complaint contains no factual allegation showing that the United States has injured her. That is, there are no allegations showing that the United States had laid claim to any real property that she claims." *Id.* at 12. Rather, Smith's complaint included only a bare assertion that "[t]here exists a dispute or controversy as to the location of the boundary lines" between two parcels of property. *Id.* at 12-13 (quoting ECF No.

Smith v. All Persons Claiming a Present or Future Interest, et al.

Civil No. 2011-41

Order

Page 6

268). This "conclusory assertion of a dispute," the Court explained, "is not sufficient to establish standing." *Id.* at 13.

Reviewing Smith's complaint and the record, it appears to the Court that each of Smith's claims against the remaining defendants may suffer from the same deficiency. Additionally, there is no record evidence that every remaining named defendant has been served with process or waived service of process.

Where, as here, a district court raises an issue with a complaint's deficiency, the plaintiff must be given notice and an opportunity to respond. *See Lassiter v. City of Philadelphia*, 716 F.3d 53, 57 (3d Cir. 2013) ("We have concluded that a district court may *sua sponte* raise the issue of the deficiency of a complaint so long as the plaintiff is accorded an opportunity to respond." (alterations and internal quotation marks omitted)); *Wallace v. Fed. Emp. Of U.S. Dist. Ct.*, *EDPA*, 325 Fed. App'x 96, 101 n.6 (3d Cir. 2009) (explaining that a district court must provide plaintiffs with "notice and an opportunity to respond before *sua sponte* dismissing their claims").

The premises considered, it is hereby

ORDERED that no later than November 21, 2016, Smith shall file a brief that will show cause why this complaint should not be dismissed for:

Smith v. All Persons Claiming a Present or Future Interest, et al.

Civil No. 2011-41

Order

Page 7

- (1) want of subject matter jurisdiction over this matter;
- (2) lack of standing by Smith to bring her claims; and
- (3) failure to state a claim upon which relief can be granted; and it is further

ORDERED that the trial in this matter, previously scheduled for Monday, November 28, 2016, is **RESCHEDULED** to commence promptly at 9:00 A.M. on Monday, January 23, 2016.

s\

CURTIS V. GÓMEZ
District Judge